IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.638 OF 2007

In

SUIT NO.454 OF 2007

Narendra Hirawat & Co., through its proprietor Narendra Hirawat : Plaintiff

V/s.

Aftab Pictures Pvt. Ltd. : Defendant

...

Mr.Ahmad Abedi with Mr.Ashok Kumar Singh i/b. Abdi & Co., for the plaintiff.

None present for the defendant.

...

CORAM : A.M. KHANWILKAR, J.

DATE : JUNE 11, 2007.

P.C.

1. Heard the counsel for the plaintiff. None appears for the defendant, though served. In fact, the defendant entered appearance through Advocate and filed reply opposing the Notice of Motion. This order will dispose of the Notice of Motion praying for interim relief during the pendency of the suit.

2. The plaintiff has approached this Court on assertion

that an Agreement of Assignment was entered into between the plaintiff and the defendant on 22.4.2004. Under the said Assignment Agreement, the defendant has assigned all acquired interest in all respects in the plaintiff's favour on payment of Rs.60 lakhs. The said interest of the plaintiff is to convey in perpetual succession for 99 years of copyright ownership and all other rights in the said films. The defendant, however, by communication dated 3.11.2006 informed the plaintiff that the assignment agreement has been terminated. The reason mentioned in the said communication is that the plaintiff has not supplied the print/s of the films of the defendant to various distributors, resulting in heavy losses to the concerned distributors. This position was, however, disputed by the plaintiff by sending Advocate's reply dated 12.11.2006. Amongst others, the plaintiff asserted that there is no question of termination of the Assignment Agreement and the act of the defendant was not permissible within the purview of section 19 of the Copyright Act, 1957, unless such agreement was to be arrived at. No response was given by the defendant to this communication. Instead, the defendant started forwarding letters to various parties. By way of illustration, the plaintiff has produced on record communication sent by the defendant dated 22.1.2007 to M/s.Zee Telefilms Limited informing that the plaintiff has no right in the concerned films.

In this background, the plaintiff has approached this Court for a declaration and injunction in the following terms:-

> "(a) that this Hon'ble Court be pleased to declare--
>
> (i) that the deed of Assignment dated April 22, 2004 assigning negative rights in 20 (Twenty) films in favour of the Plaintiff is valid and subsisting;
>
> (ii) that the Plaintiff is the owner of the entire copyright in perpetuity for the entire world (known in film world as Negative Rights) in 20 (twenty) feature films mentioned in Annexure--"A" to the Deed of Assignment dated April 22, 2004 (Exhibit--"A" to the Plaint);
>
> (iii) that the Defendant is not entitled under law to terminate Deed of Assignment dated April 22, 2004 entered into with the Plaintiff;
>
> (b) that this Hon'ble Court be pleased to pass a permanent order and injunction restraining the Defendant--
>
> (i) directly or indirectly from claiming any copyright or dealing with 20 (twenty) feature films as mentioned in Annexure--"A" to the Deed of Assignment dated April 22, 2004 (Exhibit-"A" to the Plaint) in any manner whatsoever.
>
> (ii) from claiming termination of the Deed of Assignment dated April 22, 2004 (Exhibit--"A" to the Plaint) in any manner whatsoever."

3. During the pendency of the suit, the plaintiff has taken out the present Notice of Motion praying for

interim relief as under:-

> "(a) that pending hearing and final disposal of the suit this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendant--
>
> (i) directly or indirectly from claiming any copyright or dealing with 20 (twenty) feature films as mentioned in Annexure--"A" to the Deed of Assignment dated April 22, 2004 (Exhibit--"A" to the Plaint) in any manner whatsoever.
>
> (ii) from claiming termination of the Deed of Assignment dated April 22, 2004 (Exhibit--"A" to the Plaint) in any manner whatsoever.
>
> (b) For interim and ad-interim reliefs in terms of prayer (a) above.
>
> (c) For cost of this motion be provided for.
>
> (d) For such other and further reliefs as the nature and circumstances of the case may require".

4. During the pendency of this Notice of Motion, ad-interim relief in terms of prayer clause (a) has been granted by this Court on 8.3.2007 after hearing both the sides. That ad-interim arrangement is already continuing till date.

5. Insofar as the merits are concerned, the defendant has filed reply-affidavit to contest the Notice of Motion. According to the defendant, the Assignment Agreement was only for a period of nine years and delivery of the negative has been effected by the

defendant. It is stated that the negative rights in favour of the plaintiff in respect of the stated movies were subject to the rights already disclosed by the defendant as per annexure ‘B’ to the plaint. Annexure ‘B’ to the plaint refers to the expiry period of some of the films which is a short duration such as 20.5.2007, 10.10.2007 and 30.11.2008 in relation to some of the films. Insofar as other films are concerned, obviously, it is not in dispute that it is a case of perpetual succession (99 years) under the copyright ownership and all other rights therein vested in favour of the plaintiff. Insofar as films "IZZAT", "AADMI" and "BAAZI" are concerned, the term of assignment has already expired on 20.5.2007. The plaintiff cannot get any relief insofar as those films are concerned after the date of expiry.

6. From the terms of the Assignment Agreement, it is obvious that the plaintiff has been given all the rights, lock, stock and barrel relating to copyright ownership and all other rights in the said films together with all its materials, negative, positive sound and other paraphernalia. In such as case, by operation of law (section 19 of the Copyright Act), the assignment can be terminated only by mutual consent and not unilaterally. The reason mentioned by the defendant for

terminating the assignment agreement operating in favour of the plaintiff, to say the least, is unstatable. In my opinion, the plaintiff has made out a prima facie case for continuance of the ad-interim relief till the disposal of the suit. If such relief is to be refused, it is the plaintiff who will suffer irreparable loss and injury. More over, the balance of convenience is also in favour of the plaintiff, having regard to the fact situation of the case.

7. Accordingly, this Motion ought to succeed. The same is made absolute in terms of prayer clause (a)(i) and (a)(ii) quoted above. This arrangement shall continue till the disposal of the suit. Ordered accordingly.

A.M. KHANWILKAR, J.